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July 2007 A Publication of the American Legislative Exchange Council

Tort Reform Success

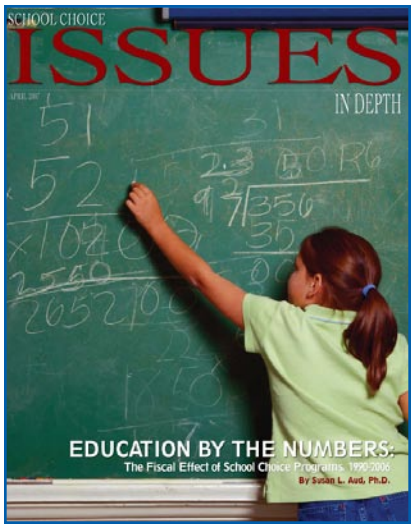
Protecting America's Children from Sexual Predators

Good Science for Good Health

The Case of the Missing Keg

Education by the Numbers: The Fiscal Effects of School Choice Programs, 1990-2006

By Andrew Webb



In May, the Milton & Rose D. Friedman Foundation released a landmark study on the financial benefits of school choice. In Education by the Numbers: The Fiscal Effects of School Choice Programs, 1990-2006, author Susan L. Aud, PhD reviewed existing school choice programs throughout the country and found states and local school districts have saved a combined $444 million dollars since 1990.

These findings put to rest choice opponents' complaints that school choice programs drain money from education budgets. In a press release, Friedman Foundation Executive Director and COO Robert Enlow remarked, "School choice saves. It saves children, and now we have empirical evidence that it saves money." Enlow continued, "In the face of $444 million in savings, another excuse to deny children a quality education has vanished before our eyes".

Of the twelve school choice programs for which data are available, Aud's investigation revealed that all are at least fiscally neutral and nine have generated savings ranging from $1 million to $144 million. Pennsylvania's Corporate Tax-Credit Scholarships came in at the top of that range and Florida's McKay Scholarships (for special needs students) followed closely behind in total savings at $139 million.

These programs save money because scholarship amounts are either equal to, or less than, the public school's current spending per student. In addition to saving money or perhaps because of it, the study also found that instructional spending per student has consistently increased in every state and district affected by school choice.

As school choice programs continue to mature in the states, research

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ALEC 2007 Calendar

July 25-29	34th Annual Meeting	Philadelphia, PA
December 5-8	States & Nation Policy Summit	Washington, D.C.

Neil Cavuto of FOX News will speak at ALEC's 34th Annual Meeting.

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ALEC Federal Update

Card Check: Bad for business, bad for workers

By Michael J. Correia

Envision the following scenario. It's 2008 and you are preparing to cast your vote for President. But, instead of walking behind the drapes to cast your ballot in secret, you write down your choice on paper, and hand it to the local party official. The "official" views your selection, nods in approval, and shows you the exit. If you think this can't happen in America, then think again. Millions of American workers, debating membership in a union, may have to prepare for just such a scenario.

On March 1, 2007 the U.S. House of Representatives debated and passed H.R. 800, the "Employee Free Choice Act of 2007" (EFCA). But you would be hard pressed to find bigger misuses of the words "free" and "choice" because this legislation offers very little of either. Supported by organized labor, and introduced by Congressman George Miller of California, this bill radically changes what has been standard practice throughout most of the 20th Century, a secret ballot.

There are three main provisions of the legislation. The first amends the National Labor Relations Act to require the National Labor Relations Board (NLRB) to certify a bargaining representative without directing an election if a majority of the bargaining unit employees have authorized designation of the representative (card-check) and there is no other individual or labor organization currently certified or recognized as the exclusive representative of any of the employees in the unit.

Under current statute, union membership has been determined by secret-ballot elections, held under the supervision of the NLRB. The process is straightforward; union organizers gather initial signatures from employees to show intent. Once 30 percent of a company's workers sign the card, the NLRB orders a secret-ballot election to be held [usually about a month or two later]. Employee votes are confidential and a simple majority wins. Stats from the NLRB show that unions win about 60 percent of these elections.

The second provision sets forth special procedural requirements for reaching an initial collective bargaining agreement following certification or recognition. If contract negotiations stall and the parties have failed to reach an agreement after 90-days, the Federal Mediation and Conciliation Service is brought in to bring both parties to an agreement. If that fails and an agreement is not reached within 30-days, an arbitration board will be

Card Check

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established to render a binding 2 year decision. This provision reduces accountability by allowing unelected bureaucrats to render binding decisions.

The final provision revises enforcement requirements with respect to unfair labor practices during union organizing drives, particularly a preliminary investigation of an alleged unfair labor practice which may lead to proceedings for injunctive relief.

It requires that priority be given to a preliminary investigation of any charge that an employer: (1) discharged or otherwise discriminated against an employee to encourage or discourage membership in the labor organization; (2) threatened to discharge or to otherwise discriminate against an employee in order to interfere with, restrain, or coerce employees in the exercise of guaranteed self-organization or collective bargaining rights; or (3) engaged in any other related unfair labor practice that significantly interferes with, restrains, or coerces employees in the exercise of such guaranteed rights. The section would require the employer to provide triple back pay and would add a civil penalty of up to $20,000 for most unfair labor practices committed by employers during organizing drives.

Union officials can't even legitimately claim that they are pursuing "card check" legislation for the benefit of their members. According to a poll of union households conducted by Zogby International, between 60 and 80 percent of respondents felt that the current secret ballot process was not only fair, but needed strengthening.

Although the House of Representatives cast a vote against freedom and choice, the Senate has still not acted on this or similar legislation. The President has signaled a potential veto to this bill and Congress may still pass legislation introduced by deceased Congressman Charles Norwood of Georgia that strengthens the secret ballot option.

Supporting the rights of workers to democratically vote in an election is far different than actually supporting union membership. One allows for choice and democracy to flourish, while the other mandates it. As mentioned earlier, there is very little freedom and choice associated with this flawed legislation. America is based on freedom: freedom to speak, freedom to petition the government, freedom to vote in private, freedom to choose and change careers, and freedom to join a union and collectively bargain for better working conditions.

Union membership in America has been steadily decreasing for over 50 years. This is not due to unfair labor laws, but due to the flourishing of individual entrepreneurial capitalism which is defining the changing world we live in. The right to freely join a union should be left to individual choice, not attached to a 300 pound strong-man, forcing you to sign a card.

The goal of the Federal Affairs office is to foster dialogue between ALEC members at both the state and federal level. Throughout its history, ALEC has focused primarily at the state level; however, in order for members to ensure their legislative initiatives are effective, they must maintain a keen interest in policy at the federal level. Great opportunities exist to bring state legislative leaders into contact with their federal counterparts. These opportunities for information exchange allow us to protect a sound and balanced government and stay true to the Jeffersonian principles ALEC upholds.

Michael J. Correia is ALEC's Director of Federal Affairs. He may be contacted at mcorreia@alec.org.

ALEC's Tort Reform Success

By Kristin Armshaw

Civil justice reform has been a priority issue for the American Legislative Exchange Council (ALEC) since the 1980s. Its Civil Justice Task Force and Disorder in the Court program have had tremendous success in both increasing the visibility of the issue and legislative enactments in the state. Civil justice reform has brought job creation, economic growth, and increased access to health care. State reforms in recent years have focused on larger packages of medical or products liability reform as well as new reforms to address various areas of concern.

Comprehensive Reform

In the past decade, a number of states successfully enacted what is often referred to as "comprehensive tort reform." Such legislation is a package of reforms bundled together to produce health care liability reform, products liability reform, or both. Typical components include replacing joint and several liability with proportional liability, venue reform, caps on noneconomic damages, and innocent seller liability protection.

That comprehensive tort reform is a challenge to enact is an understatement. However, the societal benefits are well worth it. Just ask the people of Mississippi. In 2004, after four years of effort, Gov. Haley Barbour signed comprehensive legislation into law. Often referred to as the "Mississippi Miracle," tort reform had to overcome the significant trial lawyer presence in the legislature and the state which had earned Mississippi a reputation for having the nation's worst tort climate.

Before this law was passed, doctors (particularly specialists like obstetricians) left for states like Louisiana where malpractice insurance premiums were one-fourth of those in Mississippi, and seventy-one insurance companies stopped doing business in Mississippi. In perhaps the most ironic example, after *60 Minutes* aired an expose on the "judicial hellhole" known as the 22nd judicial circuit, the local CBS affiliate, the show's producers, and several individuals who relayed their experiences found themselves defendants in a defamation law suit.

ALEC's Civil Justice Task Force co-Chair, Mississippi Sen. Charlie Ross, was the primary author of the 2004 legislation and Chair of Judiciary Committee. Just one year after tort reform passed, Sen. Ross detailed the positive changes on Mississippi's economic climate in his September 15, 2005 op-ed in the *Wall Street Journal*. Several insurance companies returned to the state including, Mass Mutual Insurance Group, St. Paul Travelers, and Equitable Life Insurance Co. Other insurance companies eased restrictions and lowered rates. Medical Assurance Company of Mississippi, the largest medical insurance provider in the state, announced a five percent decrease for rates in 2006 after having increased them by 20 percent the year prior to reform. In addition, Mississippi has become successful in recruiting new business including FedEx Ground and Winchester Ammunition. In April of this year, Dr.

Dan Jones, the dean of the University if Mississippi's School of Medicine (the only medical school in the state), announced a plan to increase the number of students, residents, and faculty members by 30 percent in the next five years. Mississippi's business and medical communities and consequently its citizens have benefited significantly from the 2004 reforms.

The Mississippi experience is not unique. Michigan, which became a model for a strong legal climate after enacting its comprehensive reform nine years ago, has been ranked number one in the nation for five years running in the creation of new plants and business expansions by Expansion Management by Site Selection Magazine. In Texas, hospitals reported that medical liability premiums rose more than 50 percent in 2003. Subsequently, Texas enacted one of the most comprehensive bills in the nation and hospitals reported a 17 percent drop in premiums the following year. In the first 10 months following the enforcement of the legislation, lawsuits filed against hospitals declined 70 percent. In addition, 10 new insurance carriers are attempting to enter the Texas market and numerous insurers have dramatically lowered their rates. After West Virginia passed a series of reforms, lower premiums have increased the number of new physicians in the state by nearly 100 since hitting a low of 305 in 2000. "Miracles" have happened in every state that has enacted such reforms.

Other Targeted Reforms

While comprehensive reform often produces immediate dramatic results, the significance of more specific targeted reforms cannot be discounted. Asbestos and silica liability reform, appeal bond caps, sunshine in government contingency fee contracts, and reforms to the jury system, correct failures in the American legal system to the benefit of industry, taxpayers, and the Rule of Law.

Asbestos and Silica Litigation Abuse Reform

Studies have shown that prior to reforms, up to 90 percent of recent asbestos claimants were unimpaired. Asbestos claims have bankrupted more than 85 companies and more than 51,000 jobs have been lost, which resulted in employees losing $559 million in pension benefits. This tragic economic loss is due almost entirely to the procedural wreck that was the asbestos lawsuit frenzy. Attorney sponsored mass screenings generated mass filings in which the truly sick were often stuck in line behind the unimpaired on an over-crowded court docket. ALEC's *Asbestos and Silica Priorities Act* offers a fair approach to the management of asbestos and silica litigation. Specifically, it establishes strict medical criteria that claims must meet in order to bring a lawsuit. The claims of the unimpaired are protected by the suspension of the statute of limitation. In addition, the legislation contains venue and joinder reform provisions. ALEC's legislation also covers litigation for silica-related injury claims, which could be the "next asbestos."

The first states to enact versions of the *Asbestos and Silica Claims Priorities Act* were also in the direst situations. Between 1998 and 2000, 66 percent of asbestos claimants who filed in state courts (only 13 percent of all claims were filed in federal court) filed in Texas, Mississippi, New York, Ohio, and West Virginia. Previously, these states had only counted for nine percent of the claims. While Texas, Mississippi, and Ohio enacted legislation to alleviate the crisis, New York's court system was able to do so by implementing an inactive docket. West Virginia continued its effort this year and was unsuccessful.

Appeal Bond Caps

Prior to the adoption of ALEC's *Appeal Bond Waiver Act* in 36 states, all but five states required a *supersedeas* or appeal bond to be posted in order to secure an appeal. When these rules were created, million- and billion-dollar judgments were unheard of, which have become increasingly more common. In the states that have not reformed appeal bond statutes, the amount required to secure an appeal can be more than a defendant's net worth. Forced settlements and increased bankruptcy filings are the consequences of obsolete appeal bond statutes.

Examples of forced bankruptcies caused by excessive

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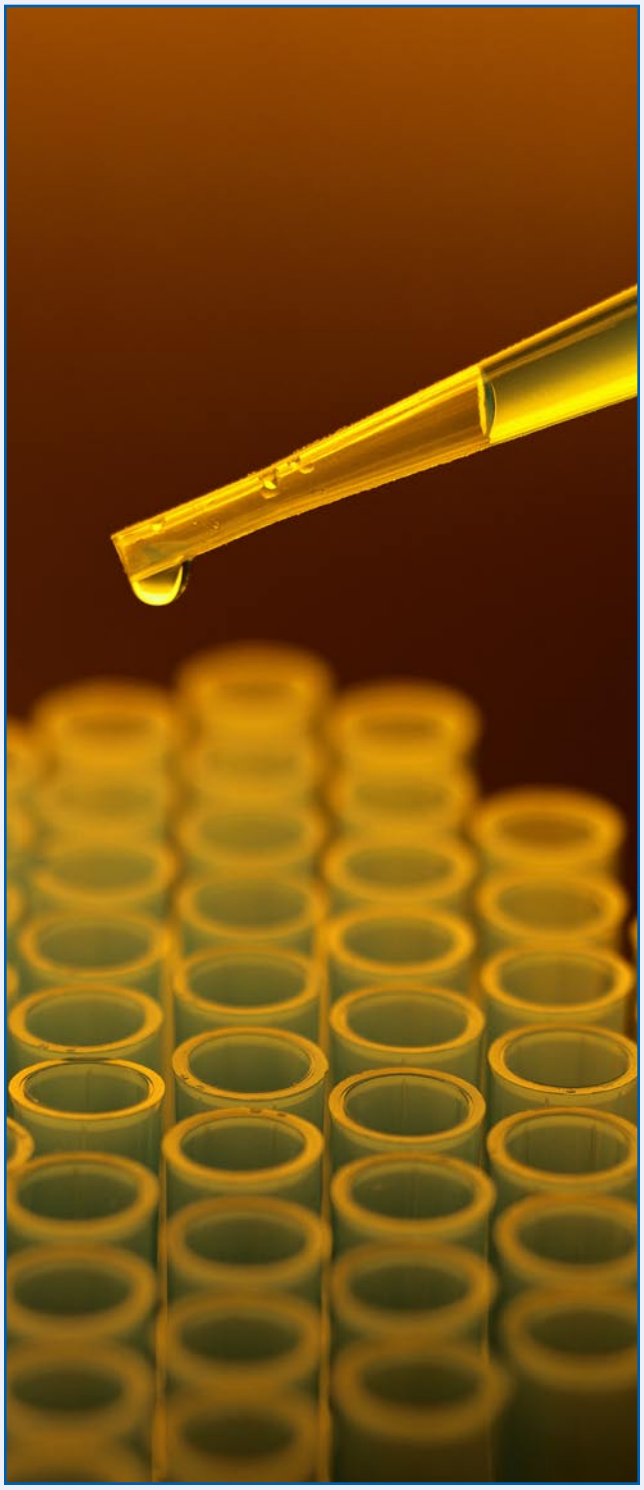
Good Science for Good Health:

Bringing scientific relevance to environmental health concerns

By Daland R. Juberg, Ph.D.



As humans have ready access to news and information from a variety of sources, it is becoming increasingly difficult to distinguish fact from speculation, truth from falsehood, and even how to identify a credible and trustworthy source of information.

Perhaps nowhere are these distinctions more valued and needed than in debates and discussions about environmental health concerns, typically those involving claims of adverse impacts to human health from environmental factors or exposures. Frequently, these claims implicate exposure to industrial chemicals, but can certainly be broadened to include other potential hazards including microbial food contamination, whether mercury in fish presents a threat to pregnant women or their offspring, or whether cell phones cause cancer. These are but a few of the thousands of claims that citizens wrestle with over the course of a lifetime, and they leave one asking—whom can I trust? What does this study or claim mean to my family or me? How can I better understand what the true risk is, if any?

For many people, including lawmakers, the media, decision-makers, ordinary citizens, and public-health officials, deep discussions involving technical details and science are not desired, but rather what is are salient conclusions that are understandable, defensible, and accurate. In a manner of speaking, is there a risk or not? Is it safe? While this type of risk communication from scientist to citizen is infrequent and often falls short of success, it can be accomplished with effort on both parts (i.e., scientist to explain in understandable terms while consumers need to ask relevant questions). For starters, in understanding risk and placing complex, albeit sometimes confusing science, into relevance for the

average human, the following should be done, if not by consumers, then by qualified scientists who should make it a priority to explain the relevance of their research to public health. While the steps described below are presented in the context of a particular scientific study of interest or concern, the same process and questions are pertinent to broader issues that go beyond single studies such as (1) is dredging the Hudson River for PCB contamination likely to do more harm than good to the environment or vice versa; (2) after decades of study, does DDT pose a unique threat to humans and the environment; or (3) does Teflon-coated cookware pose a threat to my family's health?

Framing/Grounding the Research

When considering a scientific study that reports or speculates on a health concern, one first needs to ask such questions as: who are the authors, their affiliations and their credentials, and, have they published on this topic before? Are any disclaimers noted and were self-interest groups involved with sponsorship of the study in question? Was the study published in the peer-reviewed scientific literature or is this a story from a trade magazine or other non-scientific source? Furthermore, do the authors present conclusions based on defensible data or are broad-sweeping statements and speculation embedded in the alleged claim? The first step, then, in triaging alarming environmental health claims is to critique the study and hone in on the relevance to humans.

Characterizing the Science Behind the Study

In moving deeper into the analysis of scientific research, all the while trying to determine meaning and relevance for human health, there are important questions that should be asked about the actual conduct of a study in question. These include: where was the study conducted (i.e., contract laboratory, academic institution, industrial toxicology laboratory, government agency laboratory), and were standard methods and study design employed or were novel approaches, not common in scientific research, utilized? Did the research involve laboratory animals, *in vitro* cell cultures, computer modeling, or even epidemiology (i.e., human studies), among other possible approaches? Did the research follow what are known as good laboratory practices (mandated in regulated industries) and did it adhere or follow published guideline study design? Perhaps most importantly, when evaluating human relevance, did the study employ realistic dose or exposure levels (i.e., to what humans would typically be exposed to) and relevant routes of exposure (i.e., oral, dermal, inhalation), which are important considerations when extrapolating the results to humans. This last point is central to many laboratory animal toxicology studies that often serve as the basis for concern to humans, yet often these two critical aspects (exposure levels and route of exposure) are either forgotten or given minimal attention when considering possible human relevance. Finally, did the study in question establish what is known as a no-effect or threshold level, a dose level typically used in regulatory toxicology studies when establishing permissible or acceptable exposure levels?

Weight of Evidence

To broaden the assessment of a single study with the intent of ascertaining overall implications for human health, it is appropriate to determine if the claim or evidence presented is consistent with other scientific evidence or if the study is contradictory with other published studies or with prevailing scientific consensus. Questions that should be considered at this point would necessarily include: Is there human evidence (i.e., epidemiological, clinical) to support or refute what has been reported in animal or other studies? Is there strength of evidence in studies (i.e., is there consistency in the effect(s) reported in multiple animal and/or human studies)? Is there biological plausibility for the reported effects, and is there general scientific consensus around the findings or do the findings represent an area of continued debate and controversy? Finally, a sentinel aspect when evaluating scientific evidence and possible relevance to humans is the need to explicitly understand the difference between association and causation, particularly when talking about possible effects resulting from exposure to an agent—be it

a pharmaceutical, chemical, natural product, or virtually any other substance. Frequently, many environmental health concerns are based on an association between a putative exposure and an effect. However, this is very different than proof of causation, which entails successful agreement or consistency with specified criteria involved in causal analysis.

Assessing Risk

All of the aforementioned aspects of scientific study ultimately underpin the evaluation of health risk, which is comprised of two key factors, hazard and exposure. For risk to exist, some degree of each of these two factors must be present; conversely, if one of the two is not present, there is no risk. To put this into a simple example, poisonous snake venom represents a potential hazard, but if there is no exposure to the snake, there is no risk. To use a more understandable example of how exposure comes into play, water itself represents a potential hazard, but there is a vast difference in health risk from being in the center of the Atlantic Ocean (lot of exposure) than from wading in 6 inches of water in a baby pool (relatively little exposure). The same general principles and assessment of risk apply to chemicals in the environment, sunlight, air pollution, prescription drugs, and many other potential hazards. One must be cognizant of both aspects of risk—hazard AND exposure, when assessing risk to humans.

Historically, many environmental health concerns started with recognition of a potential hazard, often based on limited evidence and with little subsequent consideration of actual human exposure. Some of the more notable examples of this include environmental exposure to DDT, plasticizers in medical devices and baby toys, arsenic in drinking water, and PCBs in farm-raised salmon. There is invariably early concern based frequently on toxicology or other laboratory studies, but this is where the assessment of risk falls short. While human exposure may be assumed, rarely is a robust exposure assessment available for humans, one that quantitatively brings accurate exposure information to bear. As a result, a common perception is that there is a serious or substantial risk to humans. This is where objective, non-emotional, rational thinking must predominate, ultimately questioning and bringing the expected human exposure potential into the discussion.

Questions to Ask

In concluding, it is possible these days to triage, prioritize, and place into context the myriad of environmental health concerns that challenge and confront humans. It may not be easy for the non-scientist to navigate through the confusing media stories, but science can offer insight and perspective. It is incumbent for those searching for truth in matters involving science and medicine, and specifically here, in matters involving environmental health, to ask and challenge scientists with the following:

- Is the study design and methodology one that is easily translatable (i.e., relevant) to humans or is it several steps removed from being realistic for humans?

- What is the weight of evidence for the alleged

claim or effect? In other words, is this a single study, has it been independently validated by other laboratories, and is there consistency in the effect of concern?

- Is an effect or concern based on animal or other non-human evidence and if so, is there human evidence to support the claim? (Note: Many EPA "possible carcinogens" are based solely on animal evidence with no supportive human evidence, yet most citizens would consider an EPA cancer classification of this type to mean a cancer risk for humans).

- If the study in question is based solely on laboratory animal studies, how do the exposure levels and routes of exposure employed in this study relate to the expected human situation?

- Has causation been proven or is this an instance of association between exposure and effect?

- If a risk is implied, how robust are both the hazard and exposure components of the risk assessment? Are there defensible, credible data to support both hazard and exposure contentions?

These represent a few of the questions that should be asked, even demanded of scientists, when trying to make sense of environmental health claims. The public, elected officials, lawmakers, and public-health practitioners have a right to objective, accurate, scientific-based information and answers, even if science cannot always provide conclusive statements. At the end, the most important and vigilant activity the average citizen can do today when discerning truth from speculation in matters involving environmental health concerns is to question the science, ask the tough, but pertinent questions, challenge the research for relevance to humans, and ultimately bring together all factors in a scientific weight of evidence assessment. In sum, to borrow a concept from the field of medicine—evaluation of environmental health concerns must increasingly become evidence-based.

The author is a senior toxicologist with Dow AgroSciences LLC in Indianapolis, IN. He has worked in the field of environmental health and toxicology for more than 15 years, encompassing both corporate toxicology and consulting. Among other professional activities, he chairs the Society of Toxicology's Regulatory Affairs and Legislative Assistance Committee as well as the Mackinac Center for Public Policy Science Advisory Board and recently spoke before the American Legislative Exchange Council on the topic of "Bringing Increased Understanding and Clarity to Complex Science and Environmental Health Concerns." He can be reached at drjuberg@dow.com.

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Tort Reform Success

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appeal bonds are all too common. Ordered to pay a $9.2 million libel and defamation judgment, Alton Telegraph Printing Co., an Illinois newspaper, would have had to post a bond equal to the judgment plus interest and costs. This amount far exceeded the company's net worth and Alton was forced to file for bankruptcy protection. When the amount of money required to obtain a bond is so high that it is impossible for a defendant to pay, a basic constitutional right is violated.

Since 2000, 36 states have recognized the unfairness of such antiquated appeal bond statutes and enacted legislation to create a fair mechanism for securing the right to appeal. Wyoming and New Mexico enacted a cap this past session.

Private Attorney Retention Sunshine Act

The power of State Attorneys General has grown tremendously over the past decade. It is essential that the office maintain a strong degree of independence to ensure its political objectivity. Complicating this are personal injury lawyers shopping litigation to Attorneys General. The contingency fee mechanism provides Attorneys General have an incentive to move forward with even somewhat novel litigation as state funds are not being used. The evolution of government employing contingency fee lawyers has wrought numerous problems. Governments and private attorneys have conflicting goals. While government motivation should be the public good, private attorneys are motivated by self interest and personal profit. When state litigation is delegated to private attorneys, government lawsuits can be prosecuted on the basis of profitability, not public interest. Most troubling are the numerous instances of Attorneys General hiring former law partners or donors to handle state litigation without any oversight. It puts states into the situation where they become a tool for special interests to promote their agendas and private lawyers to make large profits. It increases the ability of these allies to make an end run around the legislative process and regulate through litigation.

In government, impropriety or abuse cannot be tolerated. Taxpayers deserve an open process—the basis for ALEC's *Private Attorney Retention Sunshine Act* (PARSA), which clarifies how state governments may enter into contingency contracts with private attorneys. The act ensures that no state contract with a private attorney will be made by backroom negotiations or open and competitive bidding for government contracts with contingency fee lawyers. It also requires hired firms to be accountable to the public by tracking hours and keeping records.

Consumer Protection Lawsuits

One of the most recent reform pushes is the effort to close existing loopholes in state consumer protection acts (CPAs). State consumer protection statutes were adopted by states in the 1960s and '70s and are modeled off the 1914 Federal Trade Commission Act. These mini-FTCs were developed to supplement the federal law and ensure that states' Attorneys General had the means to protect their states' citizens. However, at the time they were adopted, the lawmakers of that era did not anticipate the litigiousness of modern society and often employed broad language conducive to manipulation by clever trial lawyers.

The core problem with the way state CPAs are drafted, and what most distinctively sets them apart from the federal act, is that they permit a private cause of action. This means that a trial lawyer can bring an action on behalf of a plaintiff outside of the context of government litigation.

Unlike elected government officials or regulatory bodies, private attorneys are not obligated to bring actions in the public interest. Consequently, consumer protection litigation is a dream for both special interest groups and personal injury lawyers. For issue groups, this litigation provides a venue for them to force their agenda on the American public without the hassle of the legislative or regulatory process. Oftentimes, these groups seek to do by litigation what they were unable to achieve in the statehouse. As many states offer treble (triple) damages to each plaintiff involved in an action, personal injury attorneys are incentivized by the likelihood of high attorneys' fees.

Complicating matters, many state CPAs do not explicitly require the traditional elements of common law fraud and negligence misrepresentation claims, such as reliance, intent injury, and damages. In the worst cases, a plaintiff's attorney is not even required to prove that a plaintiff even saw an allegedly deceptive advertisement before purchasing a product.

Deceptive advertising does happen and when an offense occurs every citizen has the right to made whole under the law. However, laws intended to protect citizens have been misused to promote special interest agendas and shakedown companies for a profit. ALEC developed the *Private Enforcement of Consumer Protection Statutes Act* to provide legislators with a tool to safeguard the consumer protection rights of a state's citizens while closing the loopholes that encourage abuse.

While tightening CPAs was a priority for tort reformers this session, broadening CPAs was a priority for the trial bar. Iowa, Michigan, North Dakota, Washington, and West Virginia had legislation introduced to expand the scope of their consumer protection statutes. To date, none of these attempts has succeeded.

Conclusion

The tort reform movement has seen tremendous success. Both broader reform efforts and specifically targeted legislation have encouraged economic growth, removed barriers to access to health care, and restored fundamental rights. It is essential that states continue to work toward a fair and predictable civil justice system and fight legislation that will further corrode the current legal system.

This article mentions only a few of ALEC's Civil Justice Model Legislation. Please visit www.alec.org for the full library.

Kristin Armshaw is the former Director of ALEC's Civil Justice Task Force

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Protecting America's Children from Sexual Predators

By Stacie D. Rumenap

While the recent guilty verdict in the trial of John Couey, the convicted sex offender who abducted, raped, and murdered nine-year-old Jessica Lunsford will deliver some justice for Jessica and her family, the fact that Couey was free to commit his crimes in the first place highlights the need for states to impose tougher mandatory minimum penalties for those who commit sexual crimes against children.

Couey, a registered sex offender, abducted Jessica from her Homosassa, Florida home on the night of February 23, 2005 and repeatedly sexually assaulted her before stuffing her in garbage bags and burying her alive in a shallow grave behind his home.

Sadly, the sexual victimization of children is overwhelming in magnitude yet largely unrecognized and underreported. The National Center for Missing and Exploited Children reported that one in five girls and one in ten boys are sexually exploited before they reach adulthood, and less than 35 percent of those sexual assaults are reported to authorities. Worse, the average child sexual predator victimizes anywhere from seven to over 200 victims in his or her lifetime.

Many of these sex offenders are released into society soon after they are convicted. According to the most recent available data from the Justice Department's Bureau of Justice Statistics (BJS), the average sentence imposed on child molesters is seven years and the average offender is released after serving only three. This early release comes despite the fact that the same BJS study shows that sex offenders are four times more likely than other criminals to be arrested again for a sex crime. Indeed, we are repeatedly faced with news reports where child offenders have been set free only to harm innocent children again.

Because the law was inadequate to protect children like Jessica from the danger of sexual predators, Stop Child Predators launched federal and state campaigns to educate the public and lawmakers about needed policy changes to enhance public safety. We brought together an unprecedented coalition of legislators, law enforcement organizations, community groups, victims' rights advocates, and concerned parents to lead public awareness campaigns to help prevent sexual crimes against children and to keep child protection at the forefront of the public agenda.

At the federal level, Stop Child Predators worked with Congress, who recognized the gravity of the problem facing families, and passed The Adam Walsh Child Protection and Safety Act—named after Adam Walsh who was abducted from a Hollywood, Florida shopping mall just over 25 years ago. This sweeping new law mandates 25-year minimum sentences for sex offenders convicted of sex crimes against children, allows for electronic monitoring of paroled child predators, and links states' sex offender registries to one another to create a unified national database of all registered sex offenders.

Stop Child Predators also recognized that in order to be effective in the states, it was necessary to gain the support of legislators from across the country. We did that by partnering with the American Legislative Exchange Council and passing model legislation, the *Sexual Offenses Against Children Act* (available at www.alec.org), based on the Florida version of "Jessica's Law."

This partnership with ALEC has helped us secure increased penalties for those who commit sexual offenses against children, including mandatory sentencing minimums and electronic monitoring. Further, Jessica's Law strengthens the reporting requirements for adjudicated sexual offenders. To date, our model legislation has become law in 31 states across the country, making children safer and helping to keep dangerous criminals behind bars.

Stacie D. Rumenap is the Executive Director of Stop Child Predators

The Case of the Missing Keg

By Stan Tretiak and Bob Hunt

Across America, an estimated 300,000 empty beer kegs are stolen every year, but sadly it is not much of a mystery why. Because of the increased market value of scrap metal, a greater number of thefts associated with metal goods are being reported throughout the country. Metal theft is a growing problem for both the public and private sectors, from gas, plumbing and electrical lines used in new and remodeled home and industrial construction, to selected private property of businesses, to a vast array of government property such as municipal manhole covers, street signs, and utility polls.

Scrap metal thefts have not only created safety issues, but they have also impacted local government budgets. Similarly, the number of scrap-related metal thefts of private property has posed an economic burden on manufacturers and businesses alike.

The brewing industry has been especially hard hit by this problem. Keg theft impact large and small brewers alike and the top three brewers alone will spend more than $40 million in 2007 to buy new kegs to replace lost or stolen ones, at more that $130 each. Anheuser-Busch, Miller Brewing Company and Coors Brewing Company have all experienced a doubling of their keg loss rates ion recent years and smaller craft brewers are facing similar issues.

From a brewer's perspective, these losses are primarily driven by the increase in stainless steel pricing, the main alloy used in the manufacturing of beer kegs. Kegs are the property of a brewery or importer—not the distributor, retailer, or consumer who often pay a security deposit. All kegs are also clearly marked by permanent stamping in the metal as being the property of the brewer or importer. Despite that, people continue to steal kegs and attempt to sell them to scrap metal dealers.

The reality is that in the past three years, the scrap value of a keg has gone from approximately $5 per keg to more than $25 per keg, which often exceeds most security deposits paid by the retailer or consumer. The scrap value of kegs is expected to continue to increase as overseas economies, in particular China and India, continue to grow and place higher demand on metals and other materials.

Raising the security deposit on kegs above the scrap value helps but is not the only answer since consumers who retain kegs are only a small part of the problem and most kegs are stolen after they have been returned for the deposit. Regardless, consumers should not have to bear the entire burden of increased costs as a result of the illegal activity of others.

Brewers are focusing on private as well as legislative solutions to address this growing problem. The Beer Institute recently met with the Institute of Scrap Recycling Industries, Inc. (ISRI), which consists of 4,500+ scrap metal dealers from across the nation, to develop a communication and education program for scrap dealers regarding receiving stolen property (i.e. kegs). This program includes a preventative decal to be displayed at a scrap dealer's facility and an educational piece to be sent to all scrap dealers in the country regarding the prohibition in purchasing beer kegs.

While all states have stolen property laws already in place, specific scrap metal legislation is a tool that can help brewers to heighten the awareness of this particular problem both among consumers and scrap dealers. There is also a need for clarification in many state laws over the definition of scrap. Since damaged kegs can be reconditioned and reused when returned to their proper owners, legislation should specifically mention kegs, thus eliminating any confusion over the unlawfulness of scrapping kegs.

As of April of this year, more than half of the states were considering keg/scrap metal loss legislation. Many state legislatures have already taken steps in keg/scrap metal loss prevention including Virginia and Indiana with Colorado poised to follow suit. Coors Brewing Company, for one is actively working with the American Legislative Exchange Council on this issue and recently saw a model bill approved the *Responsible Scrap Metal Purchasing and Procurement Act* (available at www.alec.org) in ALEC's Criminal Justice Task Force. As more states adopt specific legislation aimed at combating this issue, we can ensure that the nation's keg supply remains safe.

Stan Tretiak is the Director, State Government Affairs - Eastern Region and Bob Hunt is the Director, State Government Affairs - Southern Region for Coors Brewing Company.

ALEC Policy Corner:

Education Update

Education Task Force Director Matt Warner moderated a panel on education reform trends throughout the world at the Atlas Economic Research Foundation's annual Liberty Forum in Philadelphia, PA in April. Panel participants included Robert Enlow, Milton & Rose D. Friedman Foundation (United States); S.V. Gomathi, Educare Trust (India), Angus McBeath, Atlantic Institute for Market Studies (Canada); and Rick Williams, New Model School Company (United Kingdom).

New Task Force Directors

Jonathan Williams has joined ALEC as the new Director of the Tax and Fiscal Policy Task Force. Prior to joining ALEC, Jonathan served as Staff Economist at the Tax Foundation, where he conducted tax policy research. Jonathan's work has been featured in many publications including the *Wall Street Journal*, *USA Today*, the *Los Angeles Times*, and *Investor's Business Daily*. A Mid-Michigan native, Jonathan graduated magna cum laude from Northwood University in Midland, Michigan, majoring in Economics, Banking/Finance, and Business Management.

New ALEC Task Force Directors Michael Hough (left) and Jonathan Williams.

Michael Hough has also joined ALEC as the new Director of both the Criminal Justice and Homeland Security Task Force and the Commerce, Insurance, and Economic Development Task Force. Michael previously served as the legislative aide to Maryland State Sen. Alex X. Mooney. During his time working for Sen. Mooney, Michael assisted in passing legislation to establish an address confidentiality program for victims of domestic violence. He also helped to pass legislation to update Maryland's commercial code. Following high school, Michael entered the United States Air Force and served as a Minuteman III Missile technician and in 2007, he received a Bachelor's degree in political science from Towson University.

Education by the Numbers

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continues to prove the power of these programs to reform education and address the critical issues parents and lawmakers face. When parents are able to choose their child's school from a range of options, students achieve more, parents get more involved, schools become more integrated and education dollars are more efficiently spent.

Thanks to the work of the Friedman Foundation and others, the facts about school choice are confirming the principles of free markets, individual choices and limited government. Armed with this new study, lawmakers can point to the success demonstrated in neighboring states as they advance educational options for parents and students. Most importantly, more and more students will receive the kind of high-quality education they deserve.

To obtain a copy of Education by the Numbers: the Fiscal Effects of School Choice Programs, 1990-2006 and to learn more about the advantages of school choice, visit www.friedmanfoundation.org.

Andrew Webb is an intern for ALEC's Education Task Force

Member News

Rep. John E. Davis (TX) Honored by Health Groups

Texas State Representative John Davis has been honored by two separate health organizations for his outstanding leadership in the legislature on health issues. The Texas Osteopathic Medical Association (TOMA) presented Rep. Davis with its Public Service Award for his efforts to address Medicaid and CHIP, including reimbursement and eligibility, and doing so sometimes in the face of seemingly overwhelming odds.

"So many of our physicians do or want to participate in the Medicaid program but the 2.3% reduction in 2003 was a real negative for many of them. They see the efforts of Rep. Davis, and others, to turn around the Medicaid and CHIP programs and know they will make a difference in the lives of many folks and of the communities in which they live," said Sam Tessen, Executive Director of TOMA.

The Brain Injury Association of Texas (BIATX) also honored Rep. Davis because of his work during the reorganization of the state's Health and Human Services enterprise in the 78th Legislative Session. A fund that provided rehabilitative services for people suffering from brain injury was basically left unprotected and vulnerable to raids during state budget hardship. Rep. Davis took a leading role in making sure these funds would remain available.

"I am honored to receive these awards from TOMA and BIATX. These two organizations work diligently to provide comfort and much needed assistance to the people of Texas and it is they who should be applauded for their service and dedication," said Rep. Davis.

Victor Schwartz named one of the top fifty lobbyists

Victor Schwartz, Chair of the Public Policy Group housed in the D.C. office of Shook, Hardy & Bacon, has been named one of the top fifty lobbyists in the June 2007 edition of *Washingtonian* magazine. Mr. Schwartz, who is also co-chairman of ALEC's Civil Justice Reform Committee, was listed 23rd. To place the figure in context, according to congressional records, there are approximately 25,000 lobbyists registered before the United States Congress.

According to the *Washingtonian*, "Clients of a lobbyist who takes them to lunch at Subway can be reasonably sure he isn't wasting their fees. An engaging former law professor, Schwartz has devoted his professional life to winning relief for clients from cumbersome or frivolous lawsuits. One of his most important triumphs was a bill protecting manufacturers of small airplanes from liability suits if pilots crash their planes. For a coalition of veterinarians and pet-medicine manufacturers, Schwartz has been fighting legislation proposed by animal-rights groups that would allow pet owners to claim damages for pain and suffering in the event of animal injury or death."

American Legislative Exchange Council

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